

REMARKS

Applicant submits that the present amendment is fully responsive to the Office Action dated July 14, 2009 and, thus, the application is in condition for allowance.

By this reply, claims 11, 14, 34 and 42 have been canceled, and claims 10, 15, 16, 32 and 35 have amended. Claims 10, 12, 13, 15, 16, 18, 32, 35, 36 and 41 remain pending. Claims 17, 33 and 38 are withdrawn. Of the pending claims, claims 10 and 32 are independent. An expedited review and allowance of the application is respectfully requested.

In the outstanding Office Action, claims 10-16, 18, 32, 34-36, 41 and 42 were rejected under 35 U.S.C. § 112, first paragraph as failing to comply with the written description. It is asserted that the cited claims contain subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the art that the inventor has possession of the claimed invention. Applicant respectfully traverses.

The claims must be read in light of the specification and the knowledge of one having ordinary skill in the art. The recited claims do not purport to cure a disease but rather to offer a method of treatment, which is well in line with the language of the specification, particularly when considered from the perspective of one having ordinary skill in the art. The cited section (page 19, lines 10-17) specifically state that “the amount may cure the disease but, typically, is administered in order to ameliorate the symptoms of the disease.” (emphasis added) Thus, there is absolutely no affirmative claim that any amount in any of the numerous examples provided for in the specification will affirmatively cure any disease. The fact is that an amount may cure a disease, but no evidence is there for it. However, what there is plentiful evidence for is that the amount *ameliorates or reduces* the symptoms of the disease. Plentiful examples are presented throughout the specification to that effect. Furthermore, there are absolutely no pending claims

that positively recite a claim to curing any disease. In fact, attention should be drawn to claims 10 and 32 which specifically recite a method of treating symptoms, and absolutely no recitation to a claim of curing disease. Thus, the rejection of the cited claims has no basis in fact because none attempt to provide for a method of curing a disease. Care has been taken to ensure that no existing claim attempts to recite a cure for a disease. Thus, the claims are supported by the specification, and the rejection should be withdrawn and the claims allowed to issue.

In the outstanding Office Action, claims 10, 12, 13 and 32 were rejected under 35 U.S.C. § 102(b) as being anticipated by Adams (U.S. Pat No. 6,077,277). It is asserted that Adams discloses a method that is substantially the same as the present invention as recited in the pending claims. Thus, it is concluded that Adams anticipates the present invention as recited in the present claims. Applicant respectfully traverses.

Neither Adams nor any other reference of record, alone or in combination, teach or suggest the present invention as recited in the pending claims. For example, Adams does not teach or suggest a method which, among other things, tests cell activation of white blood cells by assays that measure one or more of the level of free radical production, pseudopod formation, adhesion molecule expression and degranulation. Adams simply does not teach such a step evidenced by the fact that the now canceled claim 11, which recited such elements, was not rejected by Adams. At best, Adams allows for a patient to “experience” inflammation, which is completely different from the positively recited step of medical testing for specific physiological conditions. Thus, Adams does not fairly disclose at least such step so it cannot rightfully anticipate the present invention and the rejection should be withdrawn. Allowance of the pending claims is respectfully requested.

In the outstanding Office Action, claims 10, 12-16, 32 and 34-36 were rejected under 35 U.S.C. § 102(b) as being anticipated by Groutas (U.S. Pat No. 6,077,277). It is asserted that Groutas discloses a method that is substantially the same as the present invention as recited in the pending claims. Thus, it is concluded that Groutas anticipates the present invention as recited in the present claims. Applicant respectfully traverses.

Neither Groutas nor any other reference of record, alone or in combination, teach or suggest the present invention as recited in the pending claims. For example, Groutas does not teach or suggest a method which, among other things, tests cell activation of white blood cells by assays that measure one or more of the level of free radical production, pseudopod formation, adhesion molecule expression and degranulation. Groutas simply does not teach such a step evidenced by the fact that the now canceled claim 11, which recited such elements, was not rejected by Groutas. At best, Groutas allows for a patient to “experience” inflammation, which is completely different from the positively recited step of medical testing for specific physiological conditions. Thus, Groutas does not fairly disclose at least such step so it cannot rightfully anticipate the present invention and the rejection should be withdrawn. Allowance of the pending claims is respectfully requested.

In the outstanding Office Action, claims 10, 11, 32 and 42 were rejected under 35 U.S.C. § 102(e) as being anticipated by Rabkin (U.S. Pat No. 6,077,277). It is asserted that Rabkin discloses a method that is substantially the same as the present invention as recited in the pending claims. Thus, it is concluded that Rabkin anticipates the present invention as recited in the present claims. Applicant respectfully traverses.

Neither Rabkin nor any other reference of record, alone or in combination, teach or suggest the present invention as recited in the pending claims. For example, Rabkin does not

teach or suggest a method which, among other things, administers activation lowering therapy comprising administration of a protease inhibitor prior to commencing treatment for the disease or condition if the level of cell activation is elevated. Rabkin simply does not teach such a step evidenced by the fact that the now canceled claims 14 and 34, which recited such elements, were not rejected by Rabkin. Thus, Rabkin does not fairly disclose at least such step so it cannot rightfully anticipate the present invention and the rejection should be withdrawn. Allowance of the pending claims is respectfully requested.

In the outstanding Office Action, claims 10, 11, 32 and 42 were rejected under 35 U.S.C. § 102(b) as being anticipated by WO 92/15707. It is asserted that this WO reference discloses a method that is substantially the same as the present invention as recited in the pending claims. Thus, it is concluded that WO anticipates the present invention as recited in the present claims. Applicant respectfully traverses.

Neither WO nor any other reference of record, alone or in combination, teach or suggest the present invention as recited in the pending claims. For example, WO does not teach or suggest a method which, among other things, administers activation lowering therapy comprising administration of a protease inhibitor prior to commencing treatment for the disease or condition if the level of cell activation is elevated. WO simply does not teach such a step evidenced by the fact that the now canceled claims 14 and 34, which recited such elements, were not rejected by WO. Thus, WO does not fairly disclose at least such step so it cannot rightfully anticipate the present invention and the rejection should be withdrawn. Allowance of the pending claims is respectfully requested.

In the outstanding Office Action, claims 10, 12-16, 18, 32, 34-36 and 41 were rejected under 35 U.S.C. § 103(a) as being obvious over Groutas in view of JP 409040579. It is asserted

that Groutas discloses a method that is substantially the same as the present invention as recited in the pending claims but for disclosure of the use of futhan. It is then added that JP discloses such use so the combination would render the present claims as obvious. Applicant respectfully traverses.

Neither Groutas nor JP, nor any other reference of record, alone or in combination, teach or suggest the present invention as recited in the pending claims. For example, Groutas does not teach or suggest a method which, among other things, tests cell activation of white blood cells by assays that measure one or more of the level of free radical production, pseudopod formation, adhesion molecule expression and degranulation. Groutas simply does not teach such a step evidenced by the fact that the now canceled claim 11, which recited such elements, was not rejected by Groutas. At best, Groutas allows for a patient to “experience” inflammation, which is completely different from the positively recited step of medical testing for specific physiological conditions. Furthermore, JP cannot cure the deficiencies of Groutas because JP likewise does not teach or suggest a method which, among other things, tests cell activation of white blood cells by assays that measure one or more of the level of free radical production, pseudopod formation, adhesion molecule expression and degranulation. Thus, the combination of Groutas and JP does not fairly disclose at least such step so it cannot rightfully anticipate or obviate the present invention and the rejection should be withdrawn. Allowance of the pending claims is respectfully requested.

A THREE (3) month extension of time is hereby requested to enter this response. If any fees are associated with the entering and consideration of this request for consideration, please charge such fees to our Deposit Account 50-2882.

As all of the outstanding rejections have been traversed and all of the claims are believed to be in condition for allowance, Applicant respectfully requests issuance of a Notice of Allowance. If the undersigned attorney can assist in any matters regarding examination of this application, Examiner is encouraged to call at the number listed below.

Respectfully submitted,

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